

MHCC020027012021



IN THE COURT OF SESSION FOR GREATER MUMBAI

MISCELLANEOUS APPLICATION SC No. 84 OF 2021

(CNR No. MHCC02-002701-2021)

Shri. Abhishek Trimukhe

Age :- 39 years, Indian inhabitant,

Occupation :- Dy. Commissioner of Police,
Zone-IX, Mumbai,

having his office address at

Dy. Comm. of Police Zone-IX office,

Hill Road, Bandra (West),

Mumbai – 400 008.

..... Complainant

- Versus -

1) Arnab Ranjan Goswami

Age :- Adult, Indian inhabitant,

R/at :- B-1701/1702,

Raheja Atlantis CHSL,

Ganpatrao Kadam Marg,

Lower Parel, Mumbai – 400 013

2) Samyabrata Ray Goswami

Age :- Adult, Indian inhabitant,

R/at :- Raheja Atlantis CHSL,

Ganpatrao Kadam Marg,

Lower Parel, Mumbai – 400 013

3) ARG Outlier Media Pvt. Ltd.

A Private Limited Company,

incorporated under the

Companies Act, 2013 bearing

CIN: U74999MH2016PTC284365
and having its registered address at
NBW Building, Wadia International
Centre, Bombay Dyeing Compound,
PB Road, Worli, Mumbai-400 025.

..... Accused

Appearance :-

Mr. Jaysing V. Desai, the learned Public Prosecutor for the Complainant.

**CORAM :- UDAY M. PADWAD.
ADDITIONAL SESSIONS JUDGE,
(COURT ROOM No. 30).**

DATED :- 01/04/2021.

O R D E R

. Defamation of a public servant is the subject matter of the present complaint.

2. The case of the complainant as revealed through the complaint is that he is the Deputy Commissioner of Police, Zone-IX, Mumbai. The accused No. 1 is the Managing Director of one ARG Outlier Media Pvt. Ltd., the accused No. 3, which runs some TV channels. He also is the Editor-in Chief and co-founder of Republic TV news and its Hindi news arm Republic Bharat channel. He and his wife, the accused No. 2, conduct the day-to-day affairs of the accused No. 3. The complainant claims that the accused, more particularly the accused No. 1, have published several defamatory statements through their TV channels. The accused No. 1 made many such defamatory publications from his Twitter handle @arnab5222 and the YouTube channel as well. All the said publications were in respect of the role of the Mumbai Police in the investigation into the death of one Sushant Singh Rajput.

The allegations against the complainant included that he was trying to save one of the suspects namely Rhea Chakraborty. The complainant claims that his unblemished image has been totally tarnished by these baseless allegations. The accused made all such publications only with a view to assassinate his character and integrity. Therefore, he sought for sanction to prosecute the accused for defaming him. Having received the sanction by order dated 23/10/2020, he filed this complaint through the public prosecutor on 02/02/2021. Since the concerned publications were first made on 07/08/2020, the complaint is within limitation. The complainant then prayed for taking cognizance of the offences under Sections 500 and 501 read with Section 109 and/or Sections 500 and 501 read with Section 34 of the Indian Penal Code.

3. The nature of the proceeding being peculiar, the learned public prosecutor was directed to submit on the point of its tenability. Accordingly, he argued that the complaint is filed under Section 199 (2) of Code of Criminal Procedure (for short, 'the Cr. P. C.') which empowers him to file such a complaint. The person against whom the offence is committed is the Dy. Commissioner of Police and thus, a public servant. The complaint is filed with the requisite sanction. The complaint is also within limitation. Therefore, the complaint filed by him is tenable. He then urged for taking cognizance of the aforesaid offences since the allegations made by the accused are certainly defamatory.

4. Perused the record.

5. Section 199(2) of the Cr. P. C. confers a special jurisdiction on this Court to take cognizance of an offence falling under Chapter XXI

of the Indian Penal Code on a complaint. As such, before advertng to the technical aspect of the matter, it is desirable to reproduce the relevant provision for ready reference.

6. **Section 199 - Prosecution for defamation-** (1) *No Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence :*

“Provided that where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the Court, make a complaint on his or her behalf.”

(2) *“Notwithstanding anything contained in this Code, when any offence falling under Chapter XXI of the Indian Penal Code (45 of 1860) is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.”*

(3) *“Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give*

notice to the accused of the offence alleged to have been committed by him.”

(4) *“No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction-”*

(a) *of the State Government, in the case of a person who is or has been the Governor of that State or a Minister of that Government ;*

(b) *of the State Government, in the case of any other public servant employed in connection with the affairs of the State;*

(c) *of the Central Government, in any other case.*

(5) *“No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.”*

(6) *“Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect to that offence before a Magistrate having jurisdiction or the power of such Magistrate to take cognizance of the offence upon such complaint.”*

7. A plain reading of the Section 199 (2) of the Cr. P. C. makes it clear that in case of an offence falling under Chapter -XXI of the Indian Penal Code, if alleged to have been committed

against the certain category of persons named therein, then a Court of Session may take cognizance of such offence without the case being committed to it, upon a compliant in writing made by the public prosecutor. It is quite obvious that Shri. Trimukhe, being the Dy. Commissioner of Police, Zone-IX, Mumbai is a public servant and fits into the category of persons named in the said Section.

8. Section 199(2) of the Cr. P. C. further requires that the complaint has to be in writing and has to be made by the public prosecutor. This, in other words, means that no other person, be that even the person against whom the offence is alleged to have been committed, can make such a complaint. This view is further fortified by Sub-Section 6 of Section 199 of the Cr. P. C. which says that the right of the person against whom the offence is committed to make a complaint in respect of that offence before a Magistrate shall not be affected by making of the complaint by the public prosecutor.

9. A combined reading of Sub-Section-2 and Sub-Section 6 of Section 199 of the Cr. P. C. thus leaves no room to doubt that the complainant has essentially to be the public prosecutor only. This being so, it is now to be ascertained whether the public prosecutor is the complainant here.

10. The description of the complainant in the title is given as *Shri. Abhishek Trimukhe, the Dy. Commissioner of Police, Zone-*

IX, Mumbai, through the public prosecutor. This on its face depicts that Shri. Trimukhe is the complainant and he filed the complaint through the public prosecutor. Even the narration of the facts in the complaint begins with the statement “*The complainant above named begs to state on solemn affirmation as under*”. This unambiguously indicates that it is Shri. Trimukhe who has put forth his grievances against the accused, though through the public prosecutor. No doubt, the complaint in the end is signed by Mr. Jaysing V. Desai, the public prosecutor for Greater Mumbai. But mere signing a complaint would not necessarily make its signatory the complainant. As observed earlier, the public prosecutor has to be the complainant. In the present complaint, the complainant is not the public prosecutor. He merely has filed the complaint of Shri. Trimukhe, exactly similar to what the prosecutors do while filing Appeals, Revisions and other proceedings on behalf of the State/Prosecution. The public prosecutor thus is nothing more than a medium to file this complaint. This certainly is not in compliance with what the Section 199(2) of the Cr. P. C. mandates. The sanction to make complaint is also given to the public prosecutor and not to Shri. Trimukhe. Therefore, the present complaint ought to have been made by the public prosecutor alone, which is not the case here. The present complaint, in these circumstances, has but to be treated as the one made by Shri. Trimukhe and not the public prosecutor, although filed by the latter. Consequently, such filing of the complaint by the public prosecutor cannot be equated with making of a

complaint by him.

11. Proviso to Section-237 (1) of the Cr. P. C. which lays down the procedure for trial of the case of this nature can also be usefully referred to in this regard. It reads : *“Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.”*

12. This undoubtedly means that status of the person against whom the offence is alleged to have been committed would be that of a witness only. He can never become a complainant. Since he cannot become the complainant, it is made mandatory to examine him as a witness, unless directed otherwise. In the present case, the complainant and the person against whom the offence is alleged to have been committed are one and the same. This again is not in conformity with the mandatory requirement of Section 199(2) of the Cr. P. C.

13. It is not that the aggrieved public servant or the person against whom the said offence is alleged to have been committed has no forum to take his grievances to. He has the remedy to make a complaint before the competent Magistrate. His filing the complaint even through the public prosecutor however, would not confer any jurisdiction on this Court to take cognizance of the alleged offence.

14. Such being the position the cognizance of the offence alleged to have been committed by the accused cannot be taken at the instance of Shri. Trimukhe. The complaint being not the one made by the public prosecutor cannot be proceeded with further. Hence, the following order.

ORDER

Complaint M.A. SC No. 84/2021 is dismissed.

Date :- 01/04/2021.

(**Uday M. Padwad**)
Additional Sessions Judge,
Gr. Mumbai.

Dictated on : 01.04.2021
Transcribed on : 01.04.2021
Signed on : 01.04.2021

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER.”

UPLOAD DATE	TIME	STENOGRAPHER NAME
05.04.2021	05.05 P.m.	Ms. Ujwala J. Bhagat.

Name of the Judge	H.H.J. Uday M. Padwad (Court Room No.30)
Date of pronouncement of Order	01.04.2021
Order signed by P. O. on	01.04.2021
Order uploaded on	05.04.2021